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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re R.J., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.J. et al.,

Defendants and Appellants.

E071572

(Super.Ct.No. J274963)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G.  
Pace, Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and  
Appellant D.B.

Michelle Butler, under appointment by the Court of Appeal, for Defendant and  
Appellant R.J.

Michelle D. Blakemore, County Counsel, and Dawn M. Martin, Deputy County Counsel, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendants and appellants, R.J. (Father) and D.B. (Mother), are the parents of R.J. (Minor), a child born in February 2018. The parents appeal from the juvenile court's October 31, 2018, orders denying their petitions for reunification services, terminating their parental rights, and selecting adoption as Minor's permanent plan. (Welf. & Inst. Code, §§ 388, 366.26.)<sup>1</sup>

Mother claims only that the court abused its discretion in denying her section 388 petition without conducting an evidentiary hearing. In her petition, Mother sought reunification services for Minor, which she had been denied based in part on the termination, in November 2016, of her reunification services for her older two children and her failure to benefit from those services. (§ 361.5, subd. (b)(10), (13).) Father raises no claims independent of Mother's claim. He claims that, if this court remands the matter for an evidentiary hearing on Mother's petition, then this court must vacate the subsequent section 366.26 orders and reinstate his and Mother's parental rights.

We conclude Mother's petition was properly denied without an evidentiary hearing. Mother did not make a prima facie showing that granting her the relief she was

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

requesting—reunification services for Minor—would serve Minor’s best interests. (§ 388, subd. (a).) We therefore affirm the October 31, 2018, orders in their entirety.

## II. FACTS AND PROCEDURAL BACKGROUND

### A. *Factual Background*

Mother and Minor tested positive for amphetamines at the time of Minor’s birth in February 2018. During her pregnancy, Mother had three positive drug screenings for methamphetamines—in July 2017, August 2017, and December 2017—and was offered but refused rehabilitation services. Mother also had a history of depression and attention deficit hyperactivity disorder (ADHD).

When interviewed by plaintiff and respondent, San Bernardino County Children and Family Services (CFS), shortly after Minor’s birth, Mother acknowledged that she and Minor had tested positive for amphetamines but Mother denied she had a substance abuse problem. Mother explained that a friend had given her a “Vape pen” to help her quit smoking, and the friend had subsequently confirmed that the Vape pen contained “speed.” Mother also denied having been made aware of the three positive drug screenings during her pregnancy. Mother denied any current drug use and claimed she had not used drugs since high school when she experimented with marijuana. Mother denied any mental health issues or taking any mental health-related medication, but she later said she believed her positive drug screenings were due to the medications (Abilify and Ritalin) she had taken for her “racing thoughts.”

When asked about her other children, Mother said she had two older children by a different father with whom she shared custody, but she also said she had not seen her older children since the summer of 2017. When asked about her older children's dependency cases, Mother said she ““was incarcerated and the children were taken from a relative,”” and she was unaware of the reasons for their dependency. The father of Mother's older children told CFS he was adhering to a previous court order to not allow unsupervised contact between Mother and the children. The father had tried to allow Mother to visit the children but Mother did not appear interested. The children were ages three and six in February 2018.

Mother reported Father was Minor's father, but CFS was unable to locate Father with the information Mother provided. Mother and Father were not married, and Mother did not identify any relatives for Minor's placement. Mother said she was able and willing to provide for Minor's care and that she lived with her maternal aunt, but CFS found the aunt's home to be “messy and cluttered with no appropriate sleeping arrangements” for Mother or Minor. The aunt confirmed that Mother's older children lived with their father, and the aunt also said she had not observed Mother to have substance abuse issues.

#### *B. Detention, Jurisdiction, and Disposition (February to May 2018)*

##### 1. Detention

Several days after Minor was born in February 2018, CFS filed a petition alleging jurisdiction based on Mother's untreated substance abuse and mental health issues,

Father's failure to support Minor, and Mother's failure to reunify with her older children. (§ 300, subds. (b), (g), (j).) Minor was ordered detained outside parental custody. At the time of the detention hearing, Minor was still in the hospital and Father's whereabouts were still unknown. The court granted Mother supervised visits, twice weekly for two hours, and ordered Mother to drug test immediately after the detention hearing. This drug test was also positive for amphetamines.

## 2. Jurisdiction

In a jurisdictional and dispositional report, CFS reported Mother had an extensive criminal history, including "numerous drug related charges," and Mother "ha[d] been provided extensive CFS services" but had failed to benefit from them. When interviewed about the petition's allegations, Mother continued to deny she had ever used drugs. She reported she had been diagnosed with depression at age 11 and had been using Adderall and Xanax for her ADHD and her depression, but she did not know these medications contained amphetamines.

CFS opined Minor would be at risk if returned to Mother due to Mother's substance abuse and failure to reunify with her older children. The older children were removed from Mother's care in November 2015 due to Mother's "untreated mental health and untreated substance abuse." In November 2016, the court terminated Mother's reunification services for her older children, and in September 2017 their father was granted custody of them and their dependency cases were dismissed. Thus, CFS

recommended that the court deny Mother reunification services for Minor. (§ 361.5, subd. (b)(10), (13).)

At the jurisdictional hearing on March 15, 2018, the court sustained the petition's allegations that "[M]other . . . has a substance abuse problem from which she has refused to rehabilitate and which impairs her judgment and ability to provide adequate care, supervision and protection" for Minor; Mother tested positive for amphetamines at the time of Minor's birth; and Mother's untreated substance abuse problem placed Minor at risk of serious physical harm, abuse or neglect. (§ 300, subd. (b).) The court also found Mother had "an untreated mental illness" and was "not currently taking her psychotropic medication and/or receiving treatment" which impaired her ability to care for Minor and placed him at risk. (*Ibid.*)

The court also found Father had a history of substance abuse and knew or should have known of Mother's substance abuse but failed to protect Minor, all of which placed Minor at risk. (§ 300, subd. (b).) Lastly, the court found Minor was at risk because Mother's two older children, Minor's half siblings, were adjudged dependents in November 2015 "due in part to" Mother's "substance abuse and mental health," Mother's reunification services for the older children were terminated in November 2016, and the older children's dependency cases were dismissed in September 2017 when their father was granted custody of them. (§ 300, subd. (j).) The court dismissed the subdivision (g) allegation.

### 3. Disposition

At the dispositional hearing on May 21, 2018, the court adjudged Minor a dependent, ordered him removed from parental custody, and denied Mother reunification services for Minor pursuant to section 361.5, subdivision (b)(10) and (13).<sup>2</sup> The court set a section 366.26 hearing and reduced Mother's visits to once weekly for two hours, supervised.<sup>3</sup>

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<sup>2</sup> Section 361.5 provides: "(a) Except as provided in subdivision (b) . . . whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that services will benefit the child. [¶] . . . [¶] (b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian. [¶] . . . [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention . . . ."

<sup>3</sup> At the time of the dispositional hearing on May 21, 2018, Father was still an alleged father, ineligible for services. (§ 361.5, subd. (a).) Father requested a paternity test in April 2018, but at the time of the dispositional hearing he had not taken the test and had not sought predispositional services or visitation. Father later took the paternity test and its results, which CFS received on June 22, 2018, confirmed Father was Minor's biological father.

At the time of the dispositional hearing, Mother had not participated in any predispositional services through CFS, and CFS's "treatment services coordinator" had been unable to contact Mother. After Minor was born in February 2018, Mother was convicted of a "moral turpitude felony" and was on probation.

At the hearing, Mother submitted documents showing she had completed an online parenting class, had enrolled in an online substance abuse treatment class, and was pursuing mental health treatment through "Phoenix Behavior." The parenting and substance abuse services were through the "Logan Group International," a group that did not work with CFS. Mother also submitted attendance sheets showing she had been attending Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings. Mother had not submitted any of these documents to CFS, and the court sustained CFS's objection to the admission of documents. In denying Mother reunification services, the court implicitly rejected the arguments of Mother's counsel that Mother had made a reasonable effort to treat the substance abuse and mental health issues underlying her older children's dependency (§ 361.5, subd. (b)(10)), and it was in Minor's best interest to grant Mother reunification services for Minor.

### *C. Mother's Section 388 Petition and CFS's Opposition*

On September 7, 2018, Mother filed a section 388 petition seeking reunification services for Minor and increased and liberalized (i.e., unsupervised) visitation, "as appropriate." Mother's petition included an undated letter to Mother's counsel from Michael Moore, a mental health specialist with the "San Bernardino CHOICE Program"



and the San Bernardino County Behavioral Health Administration, together with a court order granting Mother's request "to waive the work release and complete the CHOICE program in lieu of jail time and work release." Mother was admitted to the CHOICE program on May 23, 2018. The petition also included a letter dated July 26, 2018, from Mother's psychiatrist, Dr. Kilbourne, discussing Mother's mental health diagnosis.

The letter from Mr. Moore confirmed and included certificates showing Mother had completed a drug and alcohol relapse prevention program in July 2018 and a parenting education program in August 2018, as part of the CHOICE program. Mr. Moore said Mother had "shown a tremendous turn around" since she was admitted to the CHOICE program and that she was "working very hard to comply" with the program and the terms and conditions of her probation. Mother also submitted attendance sheets showing she had attended numerous NA/AA meetings between May 1 2018, and August 7, 2018. Mr. Moore's letter confirmed Mother had attended 13 therapy appointments but had missed nine therapy appointments and had also missed two appointments with her psychiatrist.

Dr. Kilbourne's letter noted Mother had been diagnosed with "Dissociative Identity Disorder (DID)" and stated, "[t]he chronicity and persistence of [Mother's] symptoms make it impossible for [Mother] to successfully complete this particular court order as it stands. At this time, her symptoms include, but are not limited to: [¶] 1. Discontinuity in sense of self and agency [¶] 2. Alterations in affect, behavior, consciousness, memory, perception, cognition, and sensory-motor functioning [¶] 3.

Dissociative amnesia [i.e., inability to recall autobiographical information, gaps in time, difficulty recalling daily events outside of normal forgetting], and [¶] 4. Significant distress and impairment associated with social, occupational, and other areas of daily functioning.”

On September 12, 2018, CFS filed a section 366.26 report. Minor was nearly seven months old and had been living in the same foster home since he was released from the hospital four days after his birth, and his foster parents were committed to adopting him. Minor had a “strong attachment” to his foster parents and had to date shown no signs of developmental delays despite his *in utero* exposure to amphetamines. CFS reported no “issues” with Mother’s visits, but Mother had missed a number of visits due to her mistaken belief that she had to receive a phone call before each visit to confirm the visit.

In an addendum report, filed on October 22, 2018, CFS recommended that the court deny Mother’s petition. CFS acknowledged Mother had completed additional services, including a “Childcare Awareness program” and a course in “Seeking Employment,” and had been attending AA/NA meetings. But CFS emphasized that Minor had tested positive for amphetamines at birth and was bonded with his foster parents, while Mother had missed visits with Minor, had a history of substance abuse, failed to reunify with her older children, and had not made a reasonable effort to prevent or eliminate the need for Minor’s removal from her care.

*D. The Court's Ruling on Mother's Petition and the Section 366.26 Hearing*

The court set a hearing in order to determine whether it should grant or deny an evidentiary hearing on Mother's petition. This hearing was conducted on October 31, 2018, just before the section 366.26 hearing.<sup>4</sup> At the hearing, Mother's counsel argued Mother's petition and documentation showed she was making excellent progress in addressing her substance abuse and mental health issues, which underlay Minor's and her older children's dependencies and the order denying Mother reunification services for Minor. Mother's counsel also argued it was in Minor's best interest to reunify with Mother, or for Mother to at least have the opportunity to reunify, because Mother was Minor's "natural mother."

Minor's counsel agreed with Mother's counsel and argued the court should grant Mother's petition. Minor's counsel pointed out that Mother's doctors had "very positive things to say" about Mother's progress in treating her substance abuse and mental health issues, and Mother "seems to be fully engaged in her mental health care." Because Minor was only seven months old, Minor's counsel argued it was in Minor's best interest to allow Mother an opportunity to reunify.

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<sup>4</sup> On September 24, 2018, Father filed a section 388 petition seeking reunification services. Father had already been granted visitation. The court set a hearing to determine whether to hold an evidentiary hearing on Father's petition, and at that hearing, on October 31, 2018, denied Father's petition, along with Mother's petition, without an evidentiary hearing. Father had not participated in drug testing or any services. As noted, Father does not challenge the order denying his section 388 petition.

County counsel argued there was “absolutely no way” Mother could show that granting her reunification services would be in Minor’s best interests when Mother had not been visiting Minor every week, as the dispositional order allowed. County counsel also disputed that Mother had participated in services “on her own.” This was “absolutely not true” because Mother been ordered to participate in the CHOICE program “in lieu of jail time.”

County counsel pointed out that Dr. Kilbourne’s letter showed Mother had “four active symptoms” despite two months of mental health treatment. The most significant symptom, counsel argued, was Mother’s “significant distress and impairment associated with social, occupational, and other areas of daily functioning.” Counsel pointed out: “Due to the chronicity, persistence, and complexity of [Mother’s] symptoms, they wouldn’t even recommend she do work release, which is just usually picking up trash on the side of the road. [¶] If that is the issue, after two months of treatment and being medication compliant, Mother has not met her burden [of showing] a change in circumstances, or that there is any remote chance she can care for a child if these are her persistent symptoms. [¶] The minor is in a concurrent planning home, the parents do not visit consistently, and I don’t think there’s a remote prima facie standard.”

County counsel also emphasized Mother was supposed to be attending therapy twice weekly but had missed nine therapy appointments and attended 13. Mother was also missing appointments with her psychiatrist, and county counsel argued that “if these

are her symptoms, she cannot do that.” Thus, county counsel urged the court to find Mother did not make a prima facie showing of changed circumstances or that granting her reunification services for Minor would serve Minor’s best interests. The court denied Mother’s petition without an evidentiary hearing after finding Mother did not make the requisite prima facie showings of changed circumstances or best interests. (§ 388, subd. (a).) The court then proceeded to the section 366.26 hearing, found Minor was both generally and specifically adoptable, terminated parental rights, and selected adoption as Minor’s permanent plan. Mother and Father appeal.

### III. DISCUSSION

Mother claims the juvenile court abused its discretion in denying her section 388 petition without an evidentiary hearing. Father claims only that if this court remands the matter for an evidentiary hearing on Mother’s petition, then we must also vacate the section 366.26 orders and reinstate his parental rights along with Mother’s. We find no abuse of discretion in the denial of Mother’s petition without an evidentiary hearing. Thus, we affirm the challenged orders in their entirety.

#### *A. Applicable Law and Standard of Review*

Section 388 provides: “(a)(1) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . [¶] . . . [¶] (d) If it appears that the

best interests of the child . . . *may* be promoted by the proposed change of order . . . the court *shall order that a hearing be held . . .*” (Italics added.)

A section 388 petition “need only allege a prima facie case in order to trigger the right to proceed by way of a full hearing.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) That is, the petition must make a prima facie showing of facts sufficient to sustain a favorable decision on the petition if the facts are credited or assumed to be true. (*Id.* at p. 593; *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) The petition must be liberally construed in favor of its sufficiency (*In re K.L.* (2016) 248 Cal.App.4th 52, 62; Cal. Rules of Court, rule 5.570(a)), which is to say it must be “liberally construed in favor of granting a hearing to consider the parent’s request.” (*In re Marilyn H., supra*, at p. 309.)

“‘There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.] We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion.’ [Citation.]” (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.)

## B. *Analysis*

Mother argues her petition showed she had changed her circumstances since the dispositional order in that she was addressing both her mental health and substance abuse

issues and had reportedly made a “tremendous turn around.” She was also able to show she “could seek out services, attend services, and successfully complete services.” Most importantly, she argues, she was visiting Minor, and there were no concerns about her visits. “With the benefit of court ordered reunification services,” she argues, she “could continue participating in the next level of treatment and drug test for the social worker as she continues through reunification with [Minor].” She argues reunification with Mother would serve Minor’s best interests because it would allow him “to be part of a unified biological family.” Assuming without determining that Mother made a prima facie showing of changed circumstances, we nonetheless conclude Mother did not make a prima facie showing that granting her the relief she was requesting—reunification services as well as increased and liberalized (i.e., unsupervised) visitation, as appropriate—would serve Minor’s best interests.

Minor was only eight months old when the court considered granting an evidentiary hearing on Mother’s section 388 petition on October 31, 2018. He was in a stable placement with foster parents who were willing to adopt him, and he had a “strong attachment” to his foster parents. On the other hand, Mother had missed a number of visits with Minor, due in part to her confusion about the need to receive a phone call to confirm each visit.

In addition, Mother had only recently begun to address her long-standing mental health and substance abuse issues. Because of those issues, Mother’s reunification services for her two older children were terminated in November 2016, only two years

earlier, and Mother had shown no interest in visiting her older children. Moreover, Mother had recently been diagnosed with dissociative identity disorder, and her symptoms were extremely serious and persistent. They included “[d]issociative amnesia [i.e., inability to recall autobiographical information, gaps in time, difficulty recalling daily events outside of normal forgetting,]” and “[s]ignificant distress and impairment associated with social, occupational, and other areas of daily functioning.” Over the course of only two months, Mother missed nine therapy appointments and two psychiatry appointments. And, according to Mother’s treating mental health professionals (Mr. Moore and Dr. Kilbourne) and the court overseeing Mother’s probation, Mother was not even able to complete the work release component of her probation due to her “medication and mental illness.”

Thus, Mother did not make a prima facie showing that granting her reunification services or liberalized visitation would serve Minor’s best interests. (§ 388, subd. (a); *In re Edward H.*, *supra*, 43 Cal.App.4th at pp. 592-593.) As county counsel strenuously argued, there was not a “remote chance” Mother could care for a child, given her serious and persistent mental health symptoms. Indeed, Mother made no showing that, within any amount of time, her mental health symptoms would be sufficiently alleviated such that she would be able to care for Minor. Thus, the court did not abuse its discretion in denying Mother’s petition without an evidentiary hearing.



#### IV. DISPOSITION

The October 31, 2018, orders denying Mother's and Father's section 388 petitions without an evidentiary hearing, terminating parental rights to Minor, and selecting adoption as Minor's permanent plan, are affirmed.

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FIELDS  
J.

We concur:

McKINSTER  
Acting P. J.

RAPHAEL  
J.